

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RIDGECREST FIELD OFFICE
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**Decision Record
and
Finding of No Significant Impact
for
The Red Mountain Polygon
Temporary Motorized Vehicle Route Closures
San Bernardino County, California**

Prepared by:

**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Ridgecrest Field Office**

Environmental Assessment CA-650-02-8

Approved by: /s/ _____ **Date**
Hector Villalobos, Manager
Ridgecrest Field Office

DECISION RECORD

for

The Red Mountain Polygon Temporary Motorized Vehicle Route Closures San Bernardino County, California

Environmental Assessment CA-680-02-8

DECISION

Based on review of the Environmental Assessment (CA-680-02-8) (EA), I have decided to approve the interim closure of certain dirt roads and trails in the Red Mountain Polygon to the use of off-road (motorized) vehicles. These closures were contained in the subject EA as part of the proposed action. The closures will occur within an area of 98,043 acres located within the California Desert Conservation Area (CDCA). These routes will remain closed to the use of off-road vehicles until the final off-road vehicle route designations are completed for the polygon through the amendment process for the California Desert Conservation Area Plan (CDCA Plan).

Furthermore, I have determined that the approval of the interim closures of certain off-road vehicle roads and trails in the Red Mountain Polygon, will not significantly affect the human environment and, therefore, an environmental impact statement is not required under the National Environmental Policy Act.

RATIONALE

I have determined it necessary to use my authority under 43 Code of Federal Regulations (CFR) 8341.2(a) to close certain roads and trails in the subject area to the use of off-road vehicles in order for the Bureau of Land Management (BLM) to provide additional protection for the desert tortoise, a threatened species listed by the U.S. Fish and Wildlife Service in 1990 under the authority of Endangered Species Act (ESA). This additional protection will, in my opinion, prevent the continuation of current and future considerable adverse effects from occurring to the desert tortoise and designated critical habitat due to off-road vehicle use and associated human activities. The interim closure of certain roads and trails to the use by off-road vehicles will take effect immediately, and will remain in effect until vehicle route designation is completed for the entire western Mojave Desert and the CDCA Plan is formally amended, which is expected to occur in June of 2003.

Implementation of the temporary route closures in the Red Mountain Polygon will include identifying the closed routes on the ground with standard signs and where needed, placing temporary

barriers across the entrance of closed routes to prevent travel by off-road vehicles. Temporary barriers may include a simple line of rocks or wood posts with a single crossbar within a few feet of the ground. Implementation will also include enhanced public outreach, visitor contact, and law enforcement above current levels. Existing vehicle routes remaining available for use by off-road vehicles will also be identified by route signs.

This decision is necessary because desert tortoise populations throughout the California Desert, and particularly in the western Mojave Desert, have been reduced considerably over the last several years due to a variety of causes which are nearly all human related. Desert tortoise experts testified in July of 2001 as to the substantial decline in the tortoise population within the CDCA and the need for affirmative action to protect and stabilize the remaining population (Blincoe, et al. v. BLM, CA-690-01-02; CA-690-01-03, CA-690-01-04, CA-680-01-03, CA-680-01-04, CA-680-01-05, CA-680-01-06, Decision dated August 24, 2001, p.20 et seq).

BLM recognizes that the interim closure will displace some off-road vehicle use by the public. Public off-road vehicle use within the subject area will continued to be allowed on the remaining 197 miles of existing routes that are not closed, as well as within the nearby Spangler Hills, Jawbone and Dove Springs Off-Road Vehicle Open Areas. The closure will not have a significant negative impact on recreation since the closure is temporary, other areas in the region can fully accommodate the displaced users, and essentially all significant areas within the Red Mountain Polygon will be able to be accessed by off-road vehicle on the existing routes available for such use.

43 CFR 8341.2(a) requires that the authorized officer immediately close an area when he or she determines that off-road vehicle use is causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, other authorized uses, or other resources. Because tortoise populations in the CDCA are in substantial decline as a result of a variety of human activities and effects, including those that involve the use of off-road vehicles, and because vehicle route designations for the polygon and other critical habitats for the tortoise are not anticipated to be completed until June of 2003, I have concluded that immediate implementation of the road and trail closures under 43 CFR 8341.2(a) is necessary. Based on the information contained in the EA, I have concluded that past and current off-road vehicle use and associated human activities in the subject polygon have resulted in considerable adverse effects to the desert tortoise and its habitat.

There is a considerable body of literature that indicates off-road vehicle use and related human activities can and have adversely affected desert tortoises. This literature is referenced in the EA that analyzes the effect of the proposed vehicle route closures, and was used in preparing the analysis. The Red Mountain Polygon is located in the Fremont-Kramer Critical Habitat in the Western Mojave Recovery Unit for the desert tortoise. The numerous roads/trails in the area, and the existing and potential human activities and effects associated with off-road vehicle use, impact the constituent elements of the habitat for this species (cover from a fairly contiguous shrub canopy with moderate interspaces, uncompacted soils suitable for burrowing, a healthy plant community with a low amount of non-native species and low to moderate diversity, and a small amount of

anthropogenic induced disturbances) necessary for desert tortoise to survive.

On March 16, 2000, the Center for Biological Diversity, et al (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against BLM. The Center alleged the BLM was in violation of Section 7 of the ESA by failing to enter into formal consultation with the F'S on the effects of adoption of the CDCA Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, BLM entered into five stipulated agreements, including the stipulation which includes this closure.

Although precipitated by the Center's lawsuit, BLM has reviewed its current management of off-road vehicle use in the Red Mountain Polygon under the CDCA Plan decisions as it relates to the desert tortoise. As an interim measure, I am implementing this closure to provide additional protection to the tortoise pending implementation of the yet to be completed vehicle route designation decisions for the CDCA Plan. By implementing this interim closure, BLM will be in compliance with sections 7(a)(1) and 7 (d) of the ESA. Section 7(a)(1) requires that Federal agencies are to utilize their authorities to further the purposes of the Act by carrying out programs for the conservation of listed species (16 USC 1536(a)(1)). Section 7(d) provides that after initiation of consultation under Section 7(a)(2), a Federal agency shall not make any irreversible or irretrievable commitment of resources with respect to agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate the requirements of the ESA. BLM initiated consultation with the U.S. Fish and Wildlife Service on the current CDCA Plan on January 31, 2001. A Biological Opinion on the CDCA Plan is expected later this year.

The interim closure of this area is consistent with the CDCA Plan. This Plan contains general and specific direction for the protection of threatened and endangered species, such as taking appropriate action, including closure of routes and areas (CDCA Plan, page 82, March 1999 reprinted version).

APPEAL RIGHTS: This decision is effective immediately. This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal (43 CFR 4.21). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413). If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Accept as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) the relative harm to the parties if the stay is granted or denied,
- (2) the likelihood of the appellant's success on the merits,
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors granting the stay.

References

Federal Register Vol 54, No. 149 pp. 32326-32331, Emergency Listing as Endangered, August 4, 1989.

Federal Register Vol 55, No. 63 pp. 12178-12190, Regular Rule-Making Listing as Threatened, April 2, 1990.

Federal Register Vol 59, No. 26 pp. 5820-5866, Critical Habitat Final Rule, February 8, 1994.

Sweitzer, Harvey C., Administrative Law Judge; Decision of August 24, 2001; Appeal of Bureau of Land Management Final Grazing Decision and Decision Record; Richard Blincoe and Blincoe Farms, et al.